



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036 FAX

mblocker@sidley.com
+1 312 853 6097

BEIJING	HONG KONG	SAN FRANCISCO
BOSTON	HOUSTON	SHANGHAI
BRUSSELS	LONDON	SINGAPORE
CENTURY CITY	LOS ANGELES	SYDNEY
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FOUNDED 1866

February 22, 2018

Via ECF

Hon. P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *In re: SunEdison, Inc. Securities Litigation*, No. 1:16-md-2742-PKC –
In re: SunEdison, Inc. ERISA Litigation, No. 1:16-mc-02744-PKC

Dear Judge Castel:

We represent Defendants Ahmad Chatila, Emmanuel Hernandez, Antonio R. Alvarez, Clayton C. Daley, Jr., Georganne C. Proctor, Steven V. Tesoriere, James B. Williams, and Randy H. Zwirn (the “Director Defendants”), and the Investment Committee, Brian Wuebbels, Phelps Morris, Matthew Herzberg, Matt Martin, and James Welsh (the “Investment Committee Defendants”) in *In re: SunEdison, Inc., ERISA Litigation*, No. 1:16-mc-02744-PKC. Defendant Peter Blackmore, represented by WilmerHale, joins in this submission.

Defendants respectfully submit the attached decision, *Usenko v. SunEdison Semiconductor, LLC, et al.*, No. 4:17-2227 (E.D. Mo. Feb. 21, 2018), which is relevant to Defendants’ Motion to Dismiss Plaintiffs’ Second Amended Consolidated Complaint pending in the above-captioned case. A true and correct copy of that opinion and order is attached hereto as Exhibit A.

In *Usenko*, plaintiff brought ERISA stock drop claims that are materially identical to the “public information” ERISA stock drop claims Plaintiffs have asserted in this case. *Usenko* involves the same SunEdison stock and same time period at issue here. In *Usenko*, the SunEdison stock was an investment option in a retirement plan sponsored by a company that was spun off from SunEdison. In fact, plaintiff Usenko was originally a plaintiff in this case.

The *Usenko* court granted defendants’ motion to dismiss with prejudice and denied plaintiff’s request for leave to amend. It rejected the identical arguments that Plaintiffs have advanced here, namely, that a plaintiff can avoid the impact of *Fifth Third Bancorp v.*



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Dudenhoeffer, 134 S. Ct. 2459 (2014) by characterizing their claims as based on “excessive risk” or an alleged “failure-to-monitor.”

Respectfully submitted,

/s/ Mark B. Blocker

Mark B. Blocker (admitted *pro hac vice*)
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
mblocker@sidley.com
*Counsel for Director Defendants and
Investment Committee Defendants*

/s/ Timothy J. Perla

Timothy J. Perla (admitted *pro hac vice*)
WilmerHale
60 State Street
Boston, MA 02109
timothy.perla@wilmerhale.com
Counsel for Defendant Peter Blackmore

cc: All Counsel of Record (via ECF)